

**Assembly Bill 419 (PERS Committee)  
STRS Board Elections: reporting and audits  
Urgency statute**

**Version: Introduced 2/14/03**

**Status: In Assembly Appropriations**

**Hearing date: April 30, 2003**

**Summary**

Amends the Political Reform Act (“the Act”) to make members elected to the State Teachers’ Retirement Board (STRS) elected state officers by amending Government Code sections 82023 and 82024.<sup>1</sup> Adds section 84225.5 to the Act and provide for audits of STRS Board elections.

**Background**

Senate Bill 1753 (Schiff—Chapter 923, Statutes of 1998) amended the Act in a similar manner to make members elected to the California Public Employees Retirement System (CalPERS) Board of Administration elected state officers. SB 1753 added section 84225, enforceable by civil, administrative and criminal remedies, to the Act, and a similar provision, section 20096.5, to the CalPERS statutes. Section 20096.5 subjected violators to administrative and civil penalties to be assessed by the FPPC. The Commission adopted regulations 18997, 18451 and 18452 to implement that law.

Unlike the CalPERS statutes, AB 419 would impose only civil and administrative remedies for a violation of the new law. The existence of the duplicative 20096.5 provision did not weaken the Act’s enforcement of the new law because enforcement of section 84225 was not so limited. This bill specifically limits enforcement to civil and administrative remedies with respect to Government Code section 84225.5, the provision added to the Political Reform Act.

**Analysis**

**Should retirement board elections be regulated by the PRA?** In reconsidering the enactment of the CalPERS statutes, it may have been inappropriate to include retirement board elections in the Political Reform Act. At a minimum, these elections should probably have been dealt with in a separate statutory scheme—ideally outside of the PRA. First, the term “election” is defined in the Act to mean “any primary, general, special or recall election held in this state.” (Section 82022) The Elections Code defines the term to mean “any election including a primary that is provided for under [the Elections Code].” (Section 318) Neither CalPERS Board of Administration elections nor STRS Board elections would fall into those definitions. Instead, Government Code sections 20090-20099 and Education Code sections 22200-22226 set forth the mechanism for the election of candidates for CalPERS and STRS Boards, respectively. These statutes provide for the election of board members by members (as defined) rather than voters. Much of the campaign reporting scheme on which both the CalPERS statutes and proposed STRS statutes rely, however, is predicated on the Act’s definition of election.

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<sup>1</sup> Government Code §§81000-91016. References are to the Government Code unless otherwise noted.

Similarly, the term “voter” is defined in the Elections Code to mean any elector. (Section 359). An elector is any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 29 days prior to an election. (Section 321) It is this definition of voter, and not that found in the Public Employees Retirement Law or State Teachers Retirement Law, that informs the reporting statutes of the Political Reform Act. For this reason, inclusion of the CalPERS and STRS reporting provisions in the Act is largely incongruous.

**Bill renders conflicts prohibitions unenforceable against board members.** Of greatest concern is the fact that, by including CalPERS (and, as proposed in AB 419, STRS) Board members in the definition of elected state officers, the conflict-of-interest provisions of sections 87100 and 87103 are made applicable to, but not enforceable against, these public officials. This is because section 87102 provides (in pertinent part):

Except as provided in Section 87102.5 [relative only to legislators], the remedies provided in Chapters 3 (commencing with Section 83100) [administrative remedy] and 11 (commencing with Section 91000) [civil and criminal remedies] shall not be applicable to elected state officers for violations or threatened violations of this article.

Unless this bill is amended to limit its scope to Chapter 4 of the Act, it would not further the Act’s purposes. The same amendment should be made with respect to CalPERS Board members.

**Unintended consequences.** In addition, the 1998 amendments to the Act adding section 84225 had a number of unintended consequences. The provisions of the bill excluded other provisions of the Act from its scope. Therefore, some key provisions, like the termination of committee requirements of Government Code section 84215, are not applicable.

With the passage of Proposition 34, Commission staff has also encountered other problems. CalPERS (and, under AB 419, STRS) Board candidates would now be subject to contribution and expenditure limits, but implementation is difficult for donors. Many donors are committees (section 82013) under the Act and their reporting requirements are triggered by elections voted upon by the general electorate (see definitions, above). Since STRS elections are not the type of elections contemplated by the Act, implementation can be difficult. Finally, the contribution and expenditure limits of Proposition 34 were set with no contemplation of whether those limits made sense for CalPERS or STRS Board candidates.

**Recommendation:** Oppose unless amended.

Staff recommends that the Commission adopt a position of “oppose unless amended” to ensure, at a minimum, that the conflicts provisions of the Act remain civilly, administratively and criminally enforceable against STRS Board members. Moreover, staff believes the subject of STRS and CalPERS Board member elections should be treated in a separate statutory scheme, ideally outside of the Political Reform Act. This would allow for contribution and expenditure limits (if any) tailored to these elections, and other approaches specific to retirement board elections.